

CHARLES M. SCHWAB

IBLA 81-256

Decided May 26, 1981

Appeal from decision of the California State Office, Bureau of Land Management, rejecting class 1 color-of-title application CA 6476.

Affirmed.

1. Color or Claim of Title: Generally -- Color or Claim of Title:  
Applications

A class 1 color-of-title claim requires good faith, peaceful adverse possession by a claimant, his ancestors or grantors, under claim or color of title for more than 20 years. The claim or color of title must be based upon a document which on its face purports to convey the claimed land to the applicant or the applicant's predecessors. When the applicant fails to produce such a document, the application must be rejected.

2. Color or Claim of Title: Applications -- Color or Claim of Title:  
Description of Land

An instrument of conveyance upon which claimant relies is sufficient to provide color of title only if it describes land conveyed with such certainty that boundaries and identity of land may be ascertained. A color-of-title application is properly rejected where the claimed land is not described in deeds produced to support an applicant's claim.

APPEARANCES: Charles M. Schwab, pro se.

## OPINION BY ADMINISTRATIVE JUDGE STUEBING

Charles M. Schwab has appealed the decision of the California State Office, Bureau of Land Management (BLM), dated November 19, 1980, rejecting his application, CA 6476, to acquire land under the Color of Title Act of December 22, 1928, as amended, 43 U.S.C. §§ 1068-1068b (1970). On September 7, 1979, appellant filed a class 1 color-of-title application for lot 17, sec. 3, T. 14 N., R. 10 E., Mount Diablo meridian, containing 7.72 acres.

The State Office rejected the application stating in part:

The deeds which Mr. Schwab has filed have been reviewed [sic] and do not appear to be adequate to establish a chain of title to the 7.72 acres that comprise Lot 17. The deed given by Claus Bargsten to C. H. Ravensburg on October 3, 1885, reads "The said premises hereby conveyed having been claimed and recorded as a homestead by Mrs. Margaret I. Bargsten." The "homestead" filed by Mrs. Maggie Margsten [sic] contained about two acres of land, according to that instrument. The various descriptions in the deeds indicate that perhaps at least three households occupied portions of Lot 17 around 1885. Mineral Survey 2397, approved February 8, 1886, on file in this office, shows "Harmans Dwelling House" as occupying the northwest portion of Lot 17. Both the deeds given to C. H. Ravensberg by Margaret I. Bargsten on July 18, 1885, and by her husband, Claus Bargsten on October 3, 1885, refer to "being bounded on the west by the premises of H. Harman," as does the deed from C. H. Ravensburg back to Claus Bargsten on October 5, 1885. The deed from Claus Bargsten back to C. H. Ravensburg on November 14, 1902, describes the land as bounded on the east by the Lebanon Placer Mine (which is Lot 59 and some distance to the east of Lot 17) and on the north, west, and south by the Harmon [sic] Placer Mine. According to the surveys on file in this office, Lot 17 is entirely surrounded by the Harman Placer Mine.

None of the foregoing identify the land according to the public land survey in effect at that time. With the exception of the acreage reference in the deed from Claus Bargsten to C. H. Ravensburg in 1885, i.e., the 2 acres claimed in Mrs. Bargsten's homestead, none of the deeds nor the subsequent conveyances from J. G. Bisbee, Administrator of the Estate of Claus Henry Ravensburg, to T. L. Schwab on September 22, 1908, T. S. Schwab to Anna M. Schwab on July 9, 1926, and the Estate of Anna M. Schwab to Theodore Schwab, Charles Schwab, Ellard Schwab, and Stuart Schwab on February 21, 1966, recite an adequate description or acreage contained therein.

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Included in the tax payment evidence submitted by Mr. Schwab is a copy of a document from the Placer County Assessor's Office which shows taxes paid on Parcel No. 64-060-04, described as 16.53 acres lying in Sec. 3, T. 14 N., R. 10 E., MD Mer., and that parcel as having been sold to the McGeachin Placer Gold Mining Company. The land is described as being part of Lot 111. According to survey information on file in this office, Lot 111 lies some distance southeasterly of Lot 17.

The applicant has not met the requirement of 43 CFR 2542.1-2(c), 1/ that he file a statement of record conveyances on a form approved by the Director that has been certified by the proper county official or by an abstractor (title company). We conclude that the documents filed by the applicant do not show that he has a clear chain of title to Lot 17. While the early deeds perhaps may have intended [*sic*] to describe a portion of Lot 17, they do not do so with a clarity that would permit identification. The later deeds apparently describe a parcel of land that could not include Lot 17 because of the distance Lot 17 lies from Lot 111.

In his statement of reasons on appeal appellant asserts that he, his ancestors, or grantors had, for more than 85 years, held in peaceful possession the property situated in sec. 3, T. 14 N., R. 10 E., Mount Diablo meridian, that valuable improvements had been placed on the land and that the land had been placed in cultivation. Appellant further argues that the conveyances in his chain of title adequately describe the land claimed and that the use of any incorrect parcel numbers used in describing the land was a direct result of an error committed in the Placer County appraisers office.

[1] The Color of Title Act, supra, directs the Secretary of the Interior to issue a patent for up to 160 acres of land to a person who has in good faith peacefully and adversely possessed public lands for more than 20 years under color or claim of title and has placed valuable improvements on the land or cultivated some part of the land. 43 U.S.C. § 1068 (1976). An applicant must base his claim or color of title upon a document from a source other than the United States, which on its face purports to convey the land applied for to the applicant or his predecessors. Anthony T. Ash, 52 IBLA 210 (1981); Marie Lombardo, 37 IBLA 247 (1978); Mable M. Farlow, 30 IBLA 320 (1977), aff'd on reconsideration, 39 IBLA 15 (1979); Cloyd and Velma Mitchell, 22 IBLA 299 (1975).

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1/ BLM's reference to 43 CFR 2542.1-2(c) is apparently in error. 43 CFR 2541.2(c) embodies the requirements set forth in that portion of the BLM decision.

[2] The instrument of conveyance upon which an applicant relies is sufficient to provide color of title only if it describes the land conveyed with such certainty that the boundaries and identity of the land may be ascertained. Mary C. Pemberton, 38 IBLA 118 (1978). See Elsie V. Farington, 9 IBLA 191, 194-96 (1973), appeal dismissed with prejudice, Civ. No. S 2768 (E.D. Cal. Dec. 5, 1973). Where the description offered contains a latent ambiguity, extrinsic evidence may be introduced to make definite the description. See Mable M. Farlow, *supra*.

In the case at bar appellant has failed to provide us with an instrument of conveyance which contains a legally sufficient description of the 7.72 acres of land claimed. The language of the first deed, from Claus Bargsten to C. H. Ravensburg, provides "[t]he said premises hereby conveyed having been claimed and recorded as a homestead by Mrs. Margaret I. Bargsten." In turn the "homestead" filed by Mrs. Maggie Bargsten was described as "containing about two acres of land." The remainder of the conveyances in appellant's chain of title fail to mention the 7.72 acres of land which have been applied for.

Generally there can be no color of title to land which is not embraced in a description in some instrument of conveyance. Jeanne Pierresteguy, 23 IBLA 358 (1976); Cloyd and Velma Mitchell, *supra*; William P. Surman, 18 IBLA 141 (1974); Marcus Rudnick, 8 IBLA 65 (1972). Further, a mistaken belief that land may be included within a description is not a sufficient basis for concluding land has been held in good faith under a claim or color of title. Jeanne Pierresteguy, *supra*. On the basis of the present record we must conclude there is insufficient information which would establish a good faith holding of the land described in the application under a claim or color of title sufficient to meet the requirements of the Color of Title Act.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing  
Administrative Judge

We concur:

Bernard V. Parrette  
Chief Administrative Judge

James L. Burski  
Administrative Judge

